IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-10-2006

CORAM

THE HONOURABLE MR.JUSTICE R.BALASUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.1078 of 2004

Balu .. Appellant

vs

State represented by
Inspector of Police
Mayiladuthurai
Crime No.1664/2002 .. Respondent

Criminal appeal preferred under Sec.374 of the Code of Criminal Procedure against the judgment of the District and Sessions Judge, Nagapattinam, made in S.C.No.33/2004 dated 5.4.2004.

For Appellant : Mr.R.Sankarasubbu
For Respondent : Mr.N.R.Elango, A.P.P.

JUDGMENT

(Judgment of this Court was delivered by M.CHOCKALINGAM, J.)

Challenging a judgment of the Sessions Division, Nagapattinam, made in S.C.No.33/2004 whereby the sole accused/appellant stood charged under Sec.302 of I.P.C., tried, found guilty as per the charge and awarded life imprisonment along with a fine of Rs.2,000/- and default sentence, the appellant has brought forth this appeal.

2.The short facts necessary for the disposal of this appeal can be stated thus:

(a) The deceased Thangamayil, was the daughter of P.W.2. She was given in marriage to one Pandian. On divorce, she was given in marriage to the appellant/accused as second wife. They had children, and they were living together during the relevant time. The appellant/accused had a friend by name Vaithi. He used to come to the house of the accused, and she used to have frequent chatting with him. The accused entertained suspicion that she developed illicit intimacy with him. On 1.10.2002 at

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about 9.30 A.M., there was a distressing cry coming from the house of the deceased, and it was heard by P.W.1, a neighbour. Immediately, he went over there. At that time, the deceased was taken in an auto by some persons. He followed them in a bicycle. At that time, she was with burn injuries. The accused fled away from the place of occurrence. P.W.2 took her to the hospital at about 9.30 A.M., where she informed to the Doctor that her husband poured acid on her, and she sustained burn injuries. She was admitted at 9.45 A.M. by P.W.11, the Doctor, attached to the Government Hospital, Mayiladuthurai, to whom she has given the said statement. The accident register copy is marked as Ex.P5. On the very day at about 10.05 A.M., the accused also came to the hospital with burn injuries and was admitted by the same Doctor. The accident register copy is marked as Ex.P6.

(b) A requisition, Ex.P2, was given to P.W.10, the Judicial Magistrate, Mayiladuthurai, who came to the hospital and on being certified that she was conscious enough and in a frame of mind to give the statement, the dying declaration was recorded by him, which stands marked as Ex.P3, wherein she has spoken as to how she sustained injuries. An intimation, Ex.P4, was given to the Out-Post Police Station, and in turn, it was forwarded to the respondent Police Station. P.W.17, the Head Constable, who was on duty at that time, proceeded to the Government Hospital, Mayiladuthurai, and recorded the statement of the deceased, which is marked as Ex.P9. He also recorded the statement of the accused, which is marked as Ex.P10. On the strength of the complaint, Ex.P10, given by her, a case came to be registered in Crime No.1664/2002 under Sec.307 of I.P.C. The printed First Information Report, Ex.P11, was sent to the Court. She was also advised to be taken to the Government Hospital, Chidambaram, for further treatment. Thereafter, she was taken to Jipmer Hospital, Pondicherry, where she was given treatment.

(c) on receipt of the copy of the FIR, P.W.20, the Inspector of Police, attached to the respondent Police Station, took up investigation, proceeded to the spot, made an inspection in the presence of two witnesses and prepared an observation mahazar, Ex.P1, and a rough sketch, Ex.P13. Then, he went over to the hospital and recorded her statement, which is marked as Ex.P15. The accused was also arrested on 21.10.2002. He gave a confessional statement, which was also recorded. Thereafter, he was sent for judicial remand. When she was under treatment, she died on 24.10.2002. An intimation was given to the respondent Police Station. The case was altered to Sec.302 of I.P.C., and the express report, Ex.P16, was also sent to the Court. The Investigator proceeded to the mortuary, where he conducted inquest on the dead body of Thangamayil in the presence of witnesses and panchayatdars and prepared Ex.P17, the inquest report. Then, he gave a requisition, Ex.P7, to the hospital authorities for the conduct of autopsy.

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(d) On receipt of the said requisition, P.W.13, the Chief Medical Officer, Department of Forensic Medicine, JIPMER, Pondicherry, conducted autopsy on the dead body of Thangamayil and issued a postmortem certificate, Ex.P8, with his opinion that the deceased died of septicemia due to burns.

(e) The material objects recovered from the place of occurrence, were subjected to chemical analysis, as a result of which Ex.P20, the Chemical Analyst's report, was received by the Court. P.W.21, the Inspector of Police, took up further investigation, and he examined P.W.12, the Doctor, and recorded his statement. P.W.22, the Inspector of Police, who took up further investigation, on completion of investigation, filed the final report.

3.The case was committed to Court of Session and necessary charge was framed. In order to substantiate the charge, the prosecution examined 22 witnesses and also relied on 20 exhibits and 3 material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Sec.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. He has not only denied them as false, but also given a statement to the effect that it was she who poured acid on him, and he sustained injuries. No defence witness was examined. After hearing the arguments advanced on either side and scrutiny of the materials, the trial Court took the view that the prosecution has proved the case beyond reasonable doubt, found him guilty as per the charge and awarded the punishment as referred to above, which is the subject matter of challenge before this Court.

4.Assailing the judgment under challenge, the learned Counsel for the appellant made the following submissions:

(i) Even as per the prosecution case, both of them were living together, and there was a quarrel often that took place between them for the past two months and also on the date of occurrence. In the instant case, what was available for the prosecution was only the dying declaration alleged to have been given by her to the Judicial Magistrate. Even before that, a statement was given to the Doctor also. It is pertinent to point out that P.W.2 and others have accompanied her. P.W.2 was the father, and there was all possibility of tutoring his daughter to give such a statement. In view of the quarrel that arose between the spouses, she would have given such a statement making false implication of the appellant/accused.

(ii) In the instant case, there is sufficient material to show that there was quarrel between the spouses even on the previous day and also on the very day.

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(iii) It is further to be pointed out that immediately on the very day, the accused also ran to the hospital with the burn injuries, and he was also admitted by P.W.11, the Doctor, at about 10.05 A.M. shortly from the time of the occurrence. The accident register copy is also marked, wherein it is found that 30% of burn injuries were found on his body, which would be indicative of the defence plea that it was the deceased who poured acid on him, and he sustained injuries. In that course, while making attempt to save him, she also sustained injuries. Thus, the defence plea was more probable. Under the circumstances, the case of the prosecution is false.

(iv) Apart from the above, in the instant case, though the occurrence has taken place on 1.10.2002, she died on 24.10.2006, and that too, after a long interval. The Doctor who conducted autopsy, has also pointed out in the postmortem certificate that she died out of septicemia, and that was the intervening circumstance. It is also found in the certificate that she was suffering from pneumonia. The Doctor has also spoken to the said fact. Thus, it would be quite clear that the injuries sustained even assuming to have been caused at the time of the incident, were not the direct consequence for the death and also not because of septicemia which she developed, and pneumonia which she was suffering. Thus, the prosecution was unable to show that the injuries sustained by her, were the direct consequence for the death. Under the circumstances, the prosecution cannot be said to have proved the case.

5.The learned Counsel would further add that even assuming the case of the prosecution that it was he who poured acid on her is proved, there is sufficient evidence to show that there was a quarrel, and due to the sudden provocation, he has acted so; that under the circumstances, the act of the accused would not attract the penal provisions of murder, but only culpable homicide not amounting to murder, and hence, that benefit has got to be given to him.

6.The Court heard the learned Additional Public Prosecutor on the above contentions and paid its anxious consideration on the same.

7.It is not a fact in controversy that the wife of the appellant/accused one Thangamyil, following an incident that took place at about 9.30 A.M. on the day of occurrence, was taken to the Government Hospital at Mayiladuthurai. She was admitted by P.W.11, the Doctor. Following the same, she was sent to the Government Hospital, Chidambaram, and then, she was taken to JIPMER Hospital, Pondicherry, where she died on 24.10.2006. The Doctor, P.W.13, who conducted postmortem, has spoken to the fact that she died out of septicemia due to burns. It is not in dispute that burn injuries were sustained by her due to the pouring of acid. Apart from that, this fact that she died out of burn injuries was never questioned by the appellant at any stage of the proceedings. At this stage, it has to be pointed out that the first contention that the intervening circumstance that she

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developed septicemia and also she was suffering from pneumonia, and thus, she died cannot be accepted at any stretch of imagination because not even a suggestion was put to the Doctor, who conducted the postmortem. But, the Doctor has given a specific opinion that she died out of septicemia due to burns, and thus, the argument put forth by the learned Counsel, has got to be discountenanced.

8.Secondly, in the instant case, immediately after the occurrence, she has made a statement to P.Ws.1 and 2, who took her to the hospital, and at the hospital, she was admitted by P.W.11, the Doctor. The earliest version given by her to the Doctor, P.W.11, is recorded in Ex.P5, the copy of the accident register, wherein she has clearly spoken to the fact that it was her husband who poured acid, due to which she sustained burn injuries. Following the same, the Judicial Magistrate, P.W.10, was given a requisition, and he also came to the hospital. After being certified that she was conscious and in a frame of mind to give the declaration, he has recorded so. A perusal of the dying declaration recorded by the Judicial Magistrate, would clearly indicate that it was free from doubt that it was the accused who poured acid on her. This Court is of the considered opinion that this is a strong piece of evidence against the accused.

9.The further contention put forth by the learned Counsel for the appellant that it was the deceased who poured acid on him, and he sustained injuries has got to be rejected for more reasons than one. At the earliest point of time, if such an occurrence has taken place, following a quarrel, one would naturally expect the husband to take his wife to the hospital; but, he went over to the hospital and admitted himself, and he has made a false statement in order to show the make belief affair that it was his wife who poured acid on him. But, no circumstances or reasons are shown why and under what circumstance she poured acid on him. Apart from that, in the instant case, she has given a clear narration that he wanted to make her nude, and when she refused, he poured acid on the private part. A perusal of the postmortem certificate would also go to show that burn injuries were sustained by her in and around both the limbs, and thus, it would be indicative of the fact that it was he who has acted so. According to the prosecution, he has got sufficient motive to do so. The same has also been spoken to by her in the dying declaration. Thus, the defence plea was rightly rejected by the lower Court. The earliest statement given to P.Ws.1 and 2, the statement given to the Doctor, P.W.11, and also the dying declaration given to the Judicial Magistrate wherein she has clearly narrated the entire incident, in the opinion of the Court, would be suffice pointing to the guilt of the accused.

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10.So far as the last contention that the act of the accused would not attract the penal provisions of murder is concerned, the same though attractive at the first instance, will not stand the scrutiny of law. In the instant case, there is nothing to show that there was any sudden quarrel or anything to provoke the accused to act so. Apart from that, it is a case, where she has narrated that he asked her to become nude, and when she refused, he has acted so by throwing acid on her body. Thus, it would be quite indicative of the intention of the accused to commit the act. This Court is of the view that the lower Court was perfectly correct in rejecting the defence plea and accepting the prosecution case. Therefore, the act of the accused would certainly attract the penal provisions of murder warranting a punishment of life imprisonment, which has been rightly done by the lower Court. This Court is unable to notice any reason to interfere either in the conviction recorded or in the sentence imposed by the Court below. Hence, the appeal has got to be dismissed sustaining the judgment of conviction and sentence passed by the lower Court.

11.In the result, this criminal appeal fails, and the same is dismissed, confirming the conviction and sentence imposed by the lower Court.

Nsv/

Sd/
Asst.Registrar

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Sub Asst.Registrar

To:

1)The District and Sessions Judge, Nagapattinam.
2)The District Collector, Nagapattinam/Cuddalore.
3)The Director General of Police, Chennai.
4)The Public Prosecutor, High Court, Madras.
5)The Superintendent, Central Prison, Cuddalore.
6)The Inspector of Police, Mayiladuthurai.

+ one cc to Mr. K. Sankarasubbu, Advocate sr no. 49910

AKM(CO)
NM(08.11.2006)

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